

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHIRLEY ANN SILVA,

Plaintiff,

vs.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

CASE NO. 1:05-cv-00391 TAG

MEMORANDUM DECISION AND ORDER  
ON PLAINTIFF'S APPEAL FROM  
ADMINISTRATIVE DECISION

ORDER DIRECTING THE CLERK TO  
ENTER JUDGMENT IN FAVOR OF  
DEFENDANT AND AGAINST PLAINTIFF

Plaintiff Shirley Ann Silva ("claimant" or "plaintiff") seeks judicial review of an administrative decision denying her claim for Supplemental Security Income ("SSI") benefits under the Social Security Act ("the Act"). Pending before the Court is claimant's appeal from the administrative decision of the Commissioner of Social Security ("Commissioner"). Claimant filed her complaint on March 22, 2005 (Doc. 1), and her opening brief on October 10, 2005. (Doc. 15). The Commissioner filed her opposition on January 5, 2006 (Doc. 18). Claimant's reply brief was filed on January 19, 2006. (Doc. 19).

Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties consented to proceed before a United States Magistrate Judge. (Docs. 4 and 10). By an order dated August 4, 2005, this action was assigned to the United States Magistrate Judge for all further proceedings. (Doc. 13).

**JURISDICTION**

On January 22, 2003, claimant filed an application for Supplemental Security Income

1 (“SSI”) benefits with a protective filing date of January 14, 2003.<sup>1</sup> (Administrative Record (“AR”)  
2 86). Claimant’s application was denied initially and on reconsideration and, on September 22, 2004,  
3 Administrative Law Judge (“ALJ”) Michael J. Haubner found that claimant was not disabled. (AR  
4 13-22). The Appeals Council denied claimant’s request for review on January 25, 2005 (AR 5-8),  
5 leaving the ALJ’s decision of September 22, 2004, as the final decision of the Commissioner. On  
6 March 22, 2005, within sixty days of the Appeals Council decision, claimant timely appealed to the  
7 district court pursuant to 42 U.S.C. § 405(g). (Doc. 1).

8 **STATEMENT OF FACTS**

9 The facts have been presented in the administrative hearing transcript, the ALJ’s decision, the  
10 briefs of both claimant and the Commissioner and will only be summarized here.

11 Claimant was 43 years old at the time of the administrative hearing before ALJ Haubner.  
12 (AR 36). In her Disability Report, claimant stated that her highest grade of school completed was a  
13 GED. (AR 98). The same report evidences that claimant worked during from June 2000 until  
14 December 2001 as a newspaper inserter. (AR 93). Her only work prior to that was in 1980.  
15 (AR 37). Also in her Disability Report, claimant clarified that her impairment - shortness of breath -  
16 first bothered her in 1984 and that she became unable to work due to it on December 10, 2001.  
17 (AR 92).

18 As to her medical condition, claimant testified that she has reactive airway disease and a  
19 history of asthmatic bronchitis. (AR 42). Claimant further stated that she takes all of her  
20 medications when and in the amounts prescribed. (AR 42). These medications include Theophyllin  
21 and inhalers, one of which claimant uses twice a day, and another which she uses four times a day.  
22 (AR 44). Claimant also stated that she uses a home nebulizer four times a day and takes oxygen  
23 once a day at bedtime. (AR 44-45). Recently, according to claimant, she had started taking  
24 prednisone. (AR 46). As a side effect from the medications, claimant stated that she gets the  
25 “shakes.” (AR 46). Claimant also testified that her last asthma attack requiring an emergency room  
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27 <sup>1</sup> To qualify as an effective claim, an application for benefits must be submitted on a prescribed form.  
28 20 C.F.R. § 404.610. However, a written statement indicating a person’s intent to claim benefits can, if certain  
coincident and subsequent requirements are met, establish a protective filing date. 20 C.F.R. § 404.630.

1 visit had occurred three weeks prior to the hearing. (AR 47). According to claimant, the only prior  
2 asthma attack requiring a visit to an emergency room was in 1996, though she gets little asthma  
3 attacks (wheezing, coughing and difficulty exhaling) about two or three times monthly, each of about  
4 five to ten minutes in duration. (AR 47-50). Notwithstanding her breathing difficulties and  
5 medications, claimant stated that she smokes daily (three cigarettes a day at the time of the hearing,  
6 10 a day several weeks prior to the hearing), though her doctors had continuously told her to quit  
7 since as long ago as 1986. (AR 43).

8 As to her daily life and activities, claimant testified that she lives alone in a house  
9 (AR 37-38), drives a stick shift automobile four or five times a week, and performs a range of  
10 household activities without assistance. (AR 38). These include bathing and showering, preparing  
11 her own meals each day, washing dishes twice daily, washing laundry every two weeks, weekly floor  
12 sweeping, weekly vacuuming, daily bed straightening, shopping weekly and attendance at church  
13 services (sitting but not standing) each week. (AR 38-42). Claimant testified that she watches three  
14 hours of television each day, reads about four hours each day and goes for walks three times a week.  
15 (AR 42). As to her exertional limitations, claimant stated that she can lift and carry only ten (10)  
16 pounds, can stand for only 20 to 25 minutes and can walk for only half a block. (AR 42-43, 46-47).  
17 Claimant also stated that she has to lay down for thirty minutes three times a day because of  
18 difficulty breathing. (AR 45).

#### 19 SEQUENTIAL EVALUATION PROCESS

20 The Social Security Act defines “disability” as the “inability to engage in any substantial  
21 gainful activity by reason of any medically determinable physical or mental impairment which can be  
22 expected to result in death or which has lasted or can be expected to last for a continuous period of  
23 not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides  
24 that a claimant shall be determined to be under a disability only if her impairments are of such  
25 severity that claimant is not only unable to do her previous work but cannot, considering claimant’s  
26 age, education and work experiences, engage in any other substantial gainful work which exists in  
27 the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

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1 The Commissioner has established a five-step sequential evaluation process for determining  
2 whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if she is  
3 engaged in substantial gainful activities. If she is, benefits are denied. 20 C.F.R. §§ 404.1520(b),  
4 416.920(b). If she is not, the analysis proceeds to step two, which considers whether claimant has a  
5 medically severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

6 If claimant does not have a severe impairment or combination of impairments, the disability  
7 claim is denied. If the impairment is severe, the evaluation proceeds to the third step, which  
8 compares claimant's impairment with a number of listed impairments acknowledged by the  
9 Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),  
10 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed  
11 impairments, claimant is conclusively presumed to be disabled. If the impairment is not one  
12 conclusively presumed to be disabling, the evaluation proceeds to the fourth step, which determines  
13 whether the impairment prevents claimant from performing work she has performed in the past. If  
14 claimant is able to perform her previous work, she is not disabled. 20 C.F.R. §§ 404.1520(e),  
15 416.920(e). If claimant cannot perform this work, the fifth and final step in the process determines  
16 whether she is able to perform other work in the national economy in view of her age, education and  
17 work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f). See Bowen v. Yuckert, 482 U.S. 137  
18 (1987).

19 The initial burden of proof rests upon a claimant to establish a *prima facie* case of entitlement  
20 to disability benefits. Rhinehart v. Finch, 438 F.2d 920, 921 (9th Cir. 1971). In terms of the five  
21 step sequential evaluation process, the Ninth Circuit has held that "[t]he burden of proof is on the  
22 claimant as to steps one to four," while at the same time noting that an ALJ's "*affirmative duty* to  
23 assist a claimant to develop the record . . . complicates the allocation of burdens" such that "the ALJ  
24 shares the burden at each step." Tackett v. Apfel, 180 F.3d 1094, 1098 & n.3 (9<sup>th</sup> Cir. 1999)(italics  
25 in original). The initial burden is met once a claimant establishes that a physical or mental  
26 impairment prevents her from engaging in her previous occupation. The burden then shifts to the  
27 Commissioner to show (1) that the claimant can perform other substantial gainful activity and  
28 (2) that a "significant number of jobs exist in the national economy" which claimant can perform.

1 Kail v. Heckler, 722 F.2d 1496, 1498 (9th Cir. 1984).

## 2 STANDARD OF REVIEW

3 Congress has provided a limited scope of judicial review of a Commissioner's decision. See,  
 4 42 U.S.C. § 405(g). A court must uphold the Commissioner's decision, made through an ALJ, when  
 5 the determination is not based on legal error and is supported by substantial evidence. See, Jones v.  
 6 Heckler, 760 F.2d 993, 995 (9<sup>th</sup> Cir. 1985); Sanchez v. Secretary of Health & Human Services, 812  
 7 F.2d 509, 510 (9<sup>th</sup> Cir. 1987) (two consulting physicians found applicant could perform light work  
 8 contrary to treating physician's findings). "The [Commissioner's] determination that a claimant is  
 9 not disabled will be upheld if the findings of fact are supported by substantial evidence." Delgado v.  
 10 Heckler, 722 F.2d 570, 572 (9th Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence is more  
 11 than a mere scintilla, Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less  
 12 than a preponderance. McAllister v. Sullivan, 888 F.2d 599, 601-602 (9th Cir. 1989); Desrosiers v.  
 13 Secretary of Health and Human Services, 846 F.2d 573, 576 (9th Cir. 1988). Substantial evidence  
 14 "means such evidence as a reasonable mind might accept as adequate to support a conclusion."  
 15 Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch inferences and  
 16 conclusions as the [Commissioner] may reasonably draw from the evidence" will also be upheld.  
 17 Mark v. Celebrezze, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as  
 18 a whole, not just the evidence supporting the decision of the Commissioner. Weetman v. Sullivan,  
 19 877 F.2d 20, 22 (9th Cir. 1989) (*quoting* Kornock v. Harris, 648 F.2d 525, 526 (9th Cir. 1980)).

20 It is the role of the trier of fact, not this Court, to resolve conflicts in evidence. Richardson,  
 21 402 U.S. at 400. If evidence supports more than one rational interpretation, the court must uphold  
 22 the decision of the ALJ. Allen v. Heckler, 749 F.2d 577, 579 (9th Cir. 1984). Moreover, if there is  
 23 substantial evidence to support the administrative findings, or if there is conflicting evidence that  
 24 will support a finding of either disability or nondisability, the finding of the Commissioner is  
 25 conclusive. Sprague v. Bowen, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987). Nevertheless, a decision  
 26 supported by substantial evidence will still be set aside if the proper legal standards were not applied  
 27 in weighing the evidence and making the decision. Browner v. Secretary of Health and Human  
 28 Services, 839 F.2d 432, 433 (9th Cir. 1987).

**ALJ'S FINDINGS**

**Step One**

The ALJ found at step one that claimant “has not engaged in substantial gainful activity since the alleged onset of disability.” (AR 21).

**Step Two**

At step two, the ALJ found that claimant suffered from reactive airways disease and a history of asthmatic bronchitis, which he considered “severe.” (AR 21).

**Step Three**

At step three, the ALJ assessed whether claimant’s impairments, while severe, were among those acknowledged by the Commissioner to be so severe as to preclude substantial gainful activity. See 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R. Pt. 404, Subpt. P, App. 1 (Listing of Impairments). The ALJ concluded that claimant’s impairments did not meet or equal any of the listed impairments. (AR 21).

**Step Four**

Based upon the first of four different hypotheticals posed by ALJ Haubner to a vocational expert (“VE”) at claimant’s administrative hearing - a hypothetical deemed by the ALJ to be “most consistent with the medical evidence of record” - the ALJ concluded that claimant could, as the VE testified, perform her past relevant work as a newspaper inserter. (AR 21). A finding of “not disabled” was therefore made by the ALJ at Step Four. (See AR 21).

**Step Five**

As an alternative to a finding of not-disabled at Step Four, the ALJ considered claimant’s Step Five status under “the Grids,” 20 C.F.R. Pt. 404, Subpt. P, App. 2. Based upon his finding that claimant was a “younger individual between the ages of 18 and 44” (AR 22, *quoting* 20 C.F.R. § 416.963), that she had obtained a GED (AR 22, *quoting* 20 C.F.R. § 416.968), and that she could “work at all exertional levels,” the ALJ determined that section 204.00 of the Grids directed a conclusion of “not disabled.” (AR 22). Even apart from the Grids, the ALJ determined that, considering the types of work that claimant was functionally capable of performing, in combination with her age, education and work experience, she “could be expected to make a vocational

adjustment to work that exists in significant numbers in the national economy.” (AR 22). Relying on testimony of a vocational expert, the ALJ stated that “[e]xamples of such jobs include the world of unskilled work, less 10 percent.” (AR 22).

### ISSUES

Claimant’s Opening Brief raised the following issue for consideration:

1. Whether the ALJ erred in discounting the opinion of claimant’s treating physician Rakesh Jindal, M.D.

2. Whether the case should be remanded for consideration of a letter from Dr. Jindal to ALJ Haubner.

3. Whether the ALJ erred in rejecting vocational expert testimony based upon claimant’s credited testimony.

This Court must uphold the Commissioner’s determination that claimant is not disabled if the Commissioner applied the proper legal standards and there is substantial evidence in the record as a whole to support the decision.

### DISCUSSION

#### **1. ALJ’s Decision to Discount Opinion of Treating Physician Rakesh Jindal, M.D.**

Claimant asserts that ALJ Haubner improperly discounted the medical opinions of her treating physician, Rakesh Jindal, M.D. (Doc. 15, pp. 6-8). Dr. Jindal had opined that claimant was “totally sedentary” and “unable to be gainfully employed” given her “severe bronchitic type COPD” or her “moderately severe emphysema with frequent flare ups of . . . asthmatic bronchitis” and that claimant “gets dyspnoic<sup>2</sup> with [the] least amount of exertion.” (AR 141, 149) (emphasis in original).

The courts distinguish among the opinions of three types of physicians: treating physicians, physicians who examine but do not treat the claimant (“examining physicians”) and those who neither examine nor treat the claimant (“nonexamining physicians”). Lester v. Chater, 81 F.3d 821, 839 (9th Cir. 1996). A treating physician’s opinion is given special weight because of his or her familiarity with a claimant’s physical condition. Fair v. Bowen, 885 F.2d 597, 604-605 (9th Cir.

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<sup>2</sup> Dyspnea is the sensation of difficulty in breathing. The Merck Manual 514 (17<sup>th</sup> ed. 1999).

1 1989). In order to reject a treating physician's ultimate conclusions, the ALJ must supply "clear and  
 2 convincing" reasons. Fair, 885 F.2d at 604-605. However, when contradicted by another doctor, the  
 3 ALJ may reject a treating physician's opinion upon giving "specific and legitimate reasons"  
 4 supported by substantial evidence in the record for so doing." Id. (quoting Murray v. Heckler, 722  
 5 F.2d 499, 502 (9th Cir. 1983)). The same test applies to examining physicians: The ALJ must give  
 6 clear and convincing reasons for rejecting uncontradicted opinions, or "specific and legitimate  
 7 reasons supported by substantial evidence in the record" for rejecting those opinions that have been  
 8 contradicted. Lester, 81 F.3d at 830-31. Finally, as to the nature of the reasons deemed sufficient (to  
 9 set aside a treating or examining physician's opinion), courts within the Ninth Circuit have  
 10 recognized conflicting medical evidence, the absence of regular medical treatment during the alleged  
 11 period of disability, and the lack of medical support for doctors' reports that are based substantially  
 12 on the claimant's subjective complaints of pain as specific legitimate reasons for disregarding a  
 13 treating or examining physician's opinion. Flaten v. Secretary of Health & Human Svcs., 44 F.3d at  
 14 1453, 1463-64; Fair, 885 F.2d at 604.

15 Here, in rejecting Dr. Tindal's opinions as set forth above, ALJ Haubner stated in part as  
 16 follows:

17 "The file contains two brief hand-written notes from the claimant's  
 18 treating physician, Dr. R. Tindal. The first indicates claimant is  
 19 'totally sedentary' (Exhibit 3F/2); the second states claimant is 'unable  
 20 to be gainfully employed' (Exhibit 5F/1). However, these notes lack  
 21 bases for the conclusions regarding limitations, such as signs, test  
 22 results, whether the limitations were based on claimant's objective  
 23 medical evidence in the record (e.g. claimant's pulmonary function  
 24 tests). . . . Furthermore, other substantial evidence (discussed in this  
 25 decision) does not fully support the conclusions in Exhibits 3F/2 and  
 26 5F/1." (AR 18-19)(emphasis added).

27 It is evident from the above that the ALJ cited specific and legitimate reasons for discounting  
 28 Dr. Jindal's opinions: (1) they were unsupported by any medical tests or any other objective evidence  
 in the record and (2) they were in fact contrary to a pulmonary function test run by another physician,  
 Tomas B. Rios, M.D., in the course of his own consultative examination. (AR 121-25). The  
 pulmonary function test run by Dr. Rios established that claimant's underlying obstructive lung  
 disease had a "good response" to "bronchodilator therapy." (AR 123). See Morgan v.

1 Commissioner of Social Security Administration, 169 F.3d 595, 603 (9<sup>th</sup> Cir. 1999)(inconsistency  
2 between medical opinion and medical tests is an appropriate basis upon which to discount such  
3 opinion).

4 Indeed, and in many respects, the facts presented in the instant case are similar to those in  
5 Figueroa v. Apfel, 2000 WL 278073 (S.D.N.Y. 2000). There, as here, a treating physician's  
6 assessment as to the severity of a claimant's asthmatic condition was controverted by the same  
7 objective evidence - a pulmonary function test. There, as here, the treating physician's severity  
8 assessment was undermined by the same additional objective evidence, namely, that claimant had  
9 never been hospitalized and only rarely visited an emergency room due to her asthmatic condition.  
10 In this respect, the following quote from Figueroa is almost word for word applicable here: "The  
11 objective evidence in the record does not demonstrate that plaintiff's asthmatic condition is so severe  
12 as to preclude her from continuing in her past employment . . . . For instance, plaintiff has made  
13 trips to the emergency room 'a few times' since 1989, but has not received any in-patient  
14 hospitalization for treatment of asthma." Figueroa, supra. Finally, in Figueroa, as here, a consulting  
15 internal medicine physician noted that claimant's asthma responded to bronchodilators. (AR 123).

16 Accordingly, although Dr. Tindal is claimant's treating physician, his restrictive assessment  
17 of her ability to work is not well supported by the substantial evidence of record and is, in fact,  
18 contradicted by such evidence, contradictions duly noted by the ALJ himself in his written  
19 determination. The Court therefore finds no error.

## 20 **2. Dr. Jindal's Post-Hearing Letter to ALJ Haubner**

21 Claimant asserts that remand is required for the consideration of records requested by ALJ  
22 Haubner from Dr. Tindal, but never received by the ALJ. (Doc. 15, p. 8). As noted by the ALJ in  
23 his written determination:

24 "I inquired bout [Dr. Jindal's] specialty(ies) and qualifications. I asked  
25 for explanation of specific limitations, onset date whereby the  
26 restrictions became effective, and bases for choosing that date, and if  
27 the condition existed less than 12 continuous months, whether it is  
28 expected to do so and at what severity level. Also, how often and  
approximate dates the doctor saw claimant, and if part of a treatment  
team, the number and approximate dates that the form's signer  
consulted with other team members regarding claimant. . . . However,  
nothing was ever submitted." (AR 18-19).

Pursuant to 42 U.S.C. § 405(g), a case may be remanded where new evidence is material and there is good cause for the failure to incorporate such evidence into the record. As to materiality, the Ninth Circuit held in Booz v. Secretary, 734 F.2d 1378 (9<sup>th</sup> Cir. 1984), that a reviewing court must first determine whether there is a reasonable possibility that new evidence would have changed the outcome of the Secretary's determination had it been before him. Id. at 1380.

No such possibility exists here. Except for Dr. Jindal's curriculum vitae (AR 178-79), the additional information submitted by him in response to the ALJ's request simply reiterates his opinion that claimant is disabled (compare AR 170 with AR 141, 149) and offers duplicate copies of medical reports already in the administrative record. (Compare AR 171-77 with AR 142, 147, 151-55).<sup>3</sup> The Court therefore finds that remand is neither appropriate nor required.

### 3. Claimant's Credibility

Claimant asserts that the ALJ erred in failing to adopt the vocational expert opinion reflective of claimant's claimed subjective limitations (i.e., ability to lift and carry only 10 pounds, ability to stand only 20 to 25 minutes, and a need to lay down three times a day for 30 minutes at a time). (Doc. 15, pp. 8-9). As claimant states, it is her contention "that her testimony is credible." (Doc. 15, p. 9).

ALJ Haubner rejected claimant's credibility. (AR 17-18.) As this credibility assessment informed the ALJ's decision throughout the sequential analysis - and not only during his Step Five hypothetical - the Court must consider the credibility issue, one duly (albeit tersely) raised by claimant, in a broader sense than simply with respect to Step Five.

A two step analysis applies at the administrative level when considering a claimant's subjective credibility. Smolen v. Chater, 80 F.3d 1273, 1281 (9<sup>th</sup> Cir. 1996). First, the claimant must produce objective medical evidence of an impairment and show that the impairment could reasonably be expected to produce some degree of symptom. Id. at 1281-82. If claimant satisfies

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<sup>3</sup> One of these duplicate reports was a Mini-Mental State Examination for which claimant scored borderline "moderate" for dementia. (Compare AR 177 with AR 147). As with claimant's asthmatic condition, this was addressed by the ALJ, who noted that in his written determination that claimant "was able to testify in a responsive manner and did not have any noticeable problems with memory, thought content or formulating the testimony in a goal-directed manner." (AR 18).

1 this test - and if there is no evidence of malingering - the ALJ can reject the claimant's testimony  
 2 about the severity of his or her symptoms "only by offering specific, clear and convincing reasons for  
 3 doing so." Id. at 1281. Such specificity is crucial so as to enable effective judicial review. See  
 4 Mersman v. Halter, 161 F. Supp. 2d 1078, 1086 (N.D. Cal. 2001)("The lack of specific, clear, and  
 5 convincing reasons why Plaintiff's testimony is not credible renders it impossible for [the] Court to  
 6 determine whether the ALJ's conclusion is supported by substantial evidence"); SSR 96-7p (the  
 7 ALJ's decision "must be sufficiently specific to make clear to the individual and to any subsequent  
 8 reviewers the weight the adjudicator gave to the individual's statements and reasons for that  
 9 weight").

10 Here - upon first synthesizing claimant's visits with various physicians (AR 15-16) - ALJ  
 11 Haubner discussed and parsed claimant's subjective complaints at great length. In doing so, he noted  
 12 numerous specific, clear and convincing reasons - all supported by substantial evidence in the record  
 13 - for discounting claimant's subjective complaints, and the supposed limitations that went with them.  
 14 Among other things, ALJ Haubner noted the following:

15 I. While claimant testified that she has problems wheezing and catching her breath,  
 16 "this complaint appears to be stable with her regimen of prescribed medication, inhalers, treatments  
 17 and supplemental oxygen . . . . [And] an examination of the lungs at the time of the consultative  
 18 internist examination in February 2003 was normal." (AR 17).

19 ii. While claimant at first testified that she is fully compliant with all her medications  
 20 and treatment, "she later admitted she still smokes cigarettes against medical advice." (AR 17).

21 iii. While claimant's disability onset date was December 10, 2001, her "dismal work  
 22 history" before then - no work at all between 1980 and 2000 - suggest that "there are motivational  
 23 factors associated with her lack of work activity which are not connected to her medical condition or  
 24 any impairment. (AR 17).

25 iii. While claimant claimed to be dysfunctional, her "wide range of activities of daily  
 26 living" suggested otherwise. (AR 18). These activities include "taking care of all her own personal  
 27 needs, cooking 2 meals a day every other day, doing dishes and laundry, sweeping and vacuuming  
 28 once a week and straightening the bed daily . . . . [going] outside 3 times a week . . . . [driving] a

1 stick-shift car 4 to 5 times a week, [going] shopping once a week and attend[ing] church once a  
2 week.” (AR 18).

3 In light of the foregoing, the Court finds that ALJ Haubner sufficiently articulated a number  
4 of inconsistencies justifying his decision to discredit claimant’s subjective complaints, and that these  
5 inconsistencies were well supported by substantial evidence in the record. See Light v. Social Sec.  
6 Admin., 119 F.3d 789, 792 (9<sup>th</sup> Cir. 1997)(“the ALJ may consider [claimant’s] reputation for  
7 truthfulness, inconsistencies either in his testimony or between his testimony and his conduct, his  
8 daily activities, his work record, and testimony from physicians and third parties concerning the  
9 nature, severity, and effect of the symptoms of which he complains”); Browner, 839 F.2d at 433  
10 (upon giving “great weight to [the] ALJ’s credibility assessment,” the court concluded that it was  
11 supported by substantial evidence). As it pertains to the final argument of claimant’s brief, the Court  
12 finds that ALJ Haubner properly rejected vocational expert testimony based upon a hypothetical that  
13 encompassed such discredited subjective complaints.

14 **CONCLUSION**

15 For the reasons outlined above, the Court finds no error in the ALJ’s analysis. As such, the  
16 Commissioner’s decision to deny disability benefits is supported by substantial evidence in the  
17 record as a whole and based on proper legal standards. Accordingly, this Court DENIES claimant’s  
18 appeal from the administrative decision of the Commissioner of Social Security.

19 The clerk of this Court is DIRECTED to enter judgment as a matter of law in favor of  
20 defendant Jo Anne B. Barnhart, Commissioner of Social Security, and against claimant Shirley Ann  
21 Silva.

22  
23 IT IS SO ORDERED.

24 Dated: April 19, 2006  
25 j6eb3d

/s/ Theresa A. Goldner  
UNITED STATES MAGISTRATE JUDGE